No. 89-643

FILED
OCT 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1989

A. RICHARD GOLUB, as attorney,

Petitioner,

(Counsel for plaintiffs below,
INTERNATIONAL SHIPPING COMPANY, S.A., and
LYGREN MARITIME SERVICES, S.A.,)

-vs.-

HYDRA OFFSHORE, INC., T. PETER PAPPAS,
JAMES PAPPAS, AMERICAN GENERAL RESOURCES, INC.,
ASTRON MANAGEMENT CORPORATION, RICHARD JAROSS,
MARYLAND NAVIGATION CO., INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

A. RICHARD GOLUB, *Petitioner,*
Attorney for Plaintiffs below
(pursuant to Rule 11 motion)
42 East 64th Street
New York, New York 10021
(212) 838-4811

Of Counsel:
Gary S. Graifman, Esq.
Ann Detiere, Esq.

PRINTINGHOUSE PRESS—(212) 719-3120

135

QUESTIONS PRESENTED

1. Whether sanctions under Rule 11 of the Federal Rules of Civil Procedure ("Rule 11") may be applied against an attorney who expounds an arguable position based on existing precedent which has not been reversed or overruled.

2. Whether sanctions under Rule 11 may be imposed on counsel who advocates an arguable position in an unsettled area of law.

3. Whether sanctions under Rule 11 may be imposed without a hearing.

PARTIES TO THE PROCEEDINGS

The petitioner is A. Richard Golub, former attorney for plaintiffs below, International Shipping Company, S.A. (a Panamanian corporation) and Lygren Maritime Services, S.A. (a Swiss corporation). The respondents-defendants below include the following: T. Peter Pappas, James Pappas, and Astron Management Corporation (wholly owned by Peter and James Pappas), all based in White Plains, New York; Richard Jaross and American General resources, Inc. (wholly owned by Richard Jaross); and Maryland Navigation Company, Inc., a Liberian corporation with its principal and only place of business located in New York.

TABLE OF CONTENTS

TABLE OF CITATIONS

APPENDIX TABLE OF CONTENTS

No.

In The

Supreme Court of the United States

October Term, 1989

A. RICHARD GOLUB, as attorney,

Petitioner,

(Counsel for plaintiffs below,
INTERNATIONAL SHIPPING COMPANY, S.A., and

LYGREN MARITIME SERVICES, S.A.),

vs.

HYDRA OFFSHORE, INC., T. PETER PAPPAS,
JAMES PAPPAS, AMERICAN GENERAL RESOURCES,

INC., ASTRON MANAGEMENT CORPORATION,
RICHARD JAROSS,
MARYLAND NAVIGATION CO., INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, A. Richard Golub, formerly counsel for plaintiffs below, respectfully requests that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Second Circuit, dated May 17, 1989, which affirmed the order of the United States District Court for the Southern District of New York, dated December 16, 1987, granting the motion of defendants below for sanctions under Rule 11.

OPINIONS BELOW

The opinon of the Court of Appeals for the Second Circuit is reproduced as Appendix A. The opinion of the United States District Court is reported at 675 F. Supp. 146 (S.D.N.Y. 1987) and is reproduced as Appendix B.

JURISDICTION

The court below entered judgment on May 17, 1989, and denied petitioner's petition for rehearing July 6, 1989 (see Appendix C). This Court has jurisdiction to review the judgment below pursuant to 28 U.S.C. Sec. 1254(1).

APPLICABLE LAW

The pertinent federal statutes include Federal Rules of Civil Procedure 11 governing sanctions. Rule 11 of the Federal Rules of Civil Procedure requires, in pertinent part, that pleadings be "well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law..."

The federal statutes upon which plaintiffs below alleged to provide

federal jurisdiction (and for which counsel was sanctioned) include the following: (i) 28 U.S.C. 1332 (diversity jurisdiction); (ii) 28 U.S.C. 1333 (admiralty jurisdiction); and (iii) 9 U.S.C. Sec. 201, et seq., (Convention on Recognition and Enforcement of Foreign Arbitral Awards).

STATEMENT OF THE CASE

The Underlying Dispute

Plaintiff International Shipping Company, S.A. ("International"), a Panamanian company, entered into a contract with Hydra Offshore, Inc. ("Hydra"), a Liberian company, to purchase the Vessel the Brazilian Friendship ("Vessel") from Hydra. Plaintiff Lygren Maritime Services ("Lygren") was a Swiss corporation, an agent of International and a participating party in the contract.

The agreement to purchase the Vessel, although "dated" May 15, 1987, was executed on May 25th, 1987 (the "Agreement"). The Agreement required that plaintiff lodge the ten percent (10%) down payment within three (3) banking days of the date of contract. Within the required three days, on May 27th, plaintiff wired the 10% deposit to the specified account. On May 28th, Hydra rejected the down payment on the grounds that plaintiff failed to lodge the down payment within three (3) banking days of May 15th.

In a back-to-back style, on May 29th, Hydra entered into another agreement to sell the Vessel to a company owned and controlled by Peter and James Pappas (the "Pappas defendants"). While the Agreement was still in effect, defendants through Richard Jaross made firm offers

to purchase the Vessel in New York and/or New Jersey.

The English Action

In order to enjoin Hydra from selling the Vessel in violation of the Agreement, plaintiffs below commenced an arbitration action in the United Kingdom. On June 1, 1987, the Queen's Bench, London, issued an order enjoining Hydra from

> selling, chartering, disposing of ... or delivering up possession or control of the same or otherwise dealing with the said Vessel in any manner which is inconsistent with the rights of the Plaintiffs under the Sale Agreement ..." (Appendix D, par. 29).

The arbitration panel in London has since rendered an Interim Final Award, dated July 31, 1987, finding that Hydra breached the agreement by rejecting

plaintiffs' deposit and contracting to sell the Vessel to defendants.

Violation of the English Order in the United States

However, although defendants were placed on notice of the June 1st order, defendants consummated the transaction by transferring and registering the Vessel in the name of Maryland Navigation Company, Inc. ("Maryland") on June 3, 1987. Maryland was a one-ship company, incorporated under the laws of Liberia, but formed in New York for the purpose of holding the Vessel for the Pappas defendants. Maryland's only and principal place of business was located in the offices belonging to the Pappas defendants in White Plains, New York. See Appendix D.

Clearly, defendants' blatant attempts at circumventing the English Order in the United States required that plaintiffs seek relief here if plaintiffs were going to purchase the Vessel. Defendants were apparently using every means available -- ranging from violating the court order to creating a shell one-transaction corporation -- to deprive plaintiffs of the Vessel.

The Underlying Action

Plaintiffs commenced the instant action in the United States District court for the Southern District of New York against defendants Maryland, Pappas, Astron, Jaross and American General Resources, Inc. (Jaross' company). The complaint alleged causes of action against the U.S. defendants

and Maryland, seeking to enjoin the violation of the English Order (First Claim), and tortious interference with contract (Fourth Claim). (See Appendix D). Plaintiffs sought an injunction by order to show cause dated June 11, 1987 to enjoin a further disposition of the Vessel by defendants in violation of the English Order.

In none of the opposition papers did defendants raise the issue of lack of diversity jurisdiction. On the eve of the return date of the hearing on this matter (June 29, 1987), counsel received defendants' reply memorandum of law, which raised the argument, for the first time, that diversity jurisdiction did not exist because there were "alien" corporations on both sides of the caption.

Despite the vigorous dispute over whether Maryland was indeed an alien corporation under 28 U.S.C. 1332(c), the district court found Maryland to be an alien corporation and dismissed the action, finding no basis for subject matter jurisdiction. Incredibly, although a fair dispute over Maryland's status existed, the court agreed to entertain a motion for sanctions against plaintiffs' counsel for instituting the action.

Postcript

The action was thereafter commenced in State Supreme Court, Westchester County, following the suggestion of Judge Leisure. Plaintiffs, after retaining new counsel, have now re-instituted the action in the United States District Court -- without

Maryland. Thus, it is clear that the court could have retained jurisdiction over the action, as it now does, without Maryland as a named defendant; the court could have merely dropped the dispensable party and retained jurisdiction, rather than dismiss the action altogether.

Nevertheless, since the federal action has been re-instituted, plaintiffs did not appeal the district court's dismissal on jurisdictional grounds. The subject of plaintiffs' appeal was limited, rather, to the question of sanctions imposed upon plaintiffs' counsel for alleging federal jurisdiction.

Decisions Below

(i) The United States District Court Opinion (See Appendix B)

The District Court granted defendants' motion for sanctions on the grounds that all of plaintiffs' jurisdictional grounds were unfounded. Presumably, had any asserted jurisdiction grounds been found to be warranted, sanctions would not have been imposed upon plaintiffs' counsel.

(a) Admiralty Jurisdiction

With respect to Admiralty Jurisdiction [28 U.S.C. Sec. 1333], the court rejected plaintiffs' contentions that the subject contract for affreightment provided a basis for admiralty jurisdiction, finding that the remainder of the action would not necessarily thereby become subject to admiralty jurisdiction (See

Appendix B). Although plaintiffs did not appeal this portion of the district court's order, alternative grounds for jurisdiction arguably existed and, if so, the absence of admiralty jurisdiction would not be sanctionable.

(b) Jurisdiction Under the Convention

With respect to the alleged jurisdiction under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards [9 U.S.C. Secs. 201-208] (the "Convention"), the court found that "this case involved neither an action to compel arbitration nor enforcement of an arbitral award..." notwithstanding the interim arbitration order issued in England enjoining defendants from selling or otherwise disposing the Vessel. The district court held that there was no authority for

enforcing an interim foreign award granting injunctive relief based solely on the Convention. In so holding, the court rejected plaintiffs' reliance on Rogers Burgun, Shahine & DeSchler, Inc. v. Dongsan Construction Co., Ltd., 598 F. Supp. 754 (S.D.N.Y. 1984) on the grounds that this case concerned only the remedy of attachment rather than injunctive relief.

The court also noted that if the Convention provided grounds for jurisdiction, such jurisdiction would exist only with respect to Hydra -- the only party subject to arbitration in the english action but which had been dropped for the purpose of maintaining diversity jurisdiction. However, the Convention would have provided alternative jurisdictional grounds as to

Hydra at the time the pleadings were signed.

The plaintiffs appealed that portion (among others) of the district court' order imposing sanctions for improperly asserting the Convention as a jurisdictional basis. At p. 16 of plaintiffs' appellate brief, plaintiffs argued that the holding of Rogers, supra, did address the question of an injunction, and that the district court adopted other authority (outside New York) contrary to the holding of Rogers -- thereby making an argument based on New York authority non-sanctionable. That pertinent excerpt of the appellate brief submitted to the United States Court of Appeals for the Second Circuit is annexed as Appendix E. It was, therefore, erroneous for the Second Circuit to rule that the district

court's findings as to jurisdictionally defective allegations based on the Convention were not contested on appeal (Appendix A, p. 3386 and fn. 5). It follows from this that the lower district court's order finding that plaintiffs' counsel's argument concerning the Convention providing jurisdictional grounds as being sanctionable is subject to review upon plaintiffs' instant writ of certiorari.

(c) Diversity Jurisdiction

As to diversity jursidiction, the district court rejected plaintiffs' argument that Maryland had dual citizenship -- having a principal and only place of business located in New York in addition to being incorporated in Liberia -- and that Maryland could be considered not to be a foreign corporation for diversity purposes. The

lower district court pointed to plaintiffs' allegations that Maryland was a foreign corporation (since it was incorporated in Liberia), and ignored the authority upon which plaintiffs relied -- Bergen Shipping Co., Ltd. v. Japan Maritime Services, Ltd, 386 F. Supp. 430 (S.D.N.Y. 1974) -- for the proposition that a "foreign" corporation with a principal place of business in New York may not be considered to be a foreign corporation for purposes of diversity jurisdiction.

The lower district court also cited the decision of Corporation Venezolana de Fomento v. Vintero Sales Corp., 629 F.2d 786 (2d Cir. 1980), for the proposition (which plaintiffs never challenged) that the presence of alien corporations on both sides defeats diversity jurisdiction (thereby begging

the question of whether Maryland was an alien corporation).

(ii) The United States Court of Appeals Opinion (See Appendix A)

The U.S. Court of Appeals did not address plaintiffs' arguments on appeal as to whether the argument asserting jurisdictional grounds under the Convention was sanctionable (as noted above), other than by stating in a footnote that "these claims were defective at the time the pleadings were signed" (Appendix A, p. 3386, fn. 5).

On the question of whether counsel's arguments with respect to diversity jurisdiction were so unfounded as to be sanctionable, the court below ruled as follows: (i) "the general rule requiring complete diversity between opposing parties is explicit and unequivocal;"

(ii) the authority of Bergen, supra, was "vitiated by our subsequent decision in Venezolana;" (iii) the holding of Venezolana concluded "beyond cavil" that a foreign corporation with a principal place of business was a foreign corporation for diversity purposes; and (iv) no evidentiary hearing was required before sanctions were imposed.

Judge Pratt below wrote a dissenting opinion, finding counsel's arguments to be (i) "sensible, albeit erroneous" and (ii) "supported by ample authority" which has (iii) "never been rejected or even squarely addressed by this court."

REASONS FOR GRANTING THE WRIT

The United States District Court for the Southern District of New York assessed sanctions in the sum of $10,000 against plaintiffs' counsel without an

evidentiary hearing, finding that the absence of federal jurisdiction was "clear beyond cavil" (Appendix B, p. 16). The United States Court of Appeals for the Second Circuit upheld the district court, finding that counsel's arguments were "examples of 'post hoc sleight of hand' calculated to make plausible very tenuous jurisdictionial claims." (Appendix A, p. 3385)

Plaintiffs' complaint alleged federal jurisdiction on the basis of admiralty (28 U.S.C. Sec. 1333), the Convention on Recognition and Enfocement of Foreign Arbitral Awards (9 U.S.C. Secs. 201-208) and diversity jurisidiction (28 U.S.C. Sec. 1332). (See Appendix C.) To support the jurisdictional claim on the basis of admiralty, plaintiff argued that the subject contract was one of

affreightment. To support the jurisdictional claim on the basis of the Convention, plaintiff argued that a party was entitled to invoke the Convention to enforce an interim award granting injunctive relief, relying on the authority of Rogers Burgun, Shahine & DeSchler, Inc. v. Dongsam Construction Co., Ltd. 598 F. Supp. 754 (S.D.N.Y. 1984).

With respect to diversity jurisdiction [28 U.S.C. 1332(c)], plaintiffs' counsel argued that complete diversity was not destroyed by the presence of alien corporations on one side (plaintiffs -- a Swiss and Panamian corporation) and domestic corporations on the other (defendants including numerous United States defendants, plus one particular defendant which was arguably not an alien corporation).

Plaintiffs' counsel never challenged the well-established proposition of law that no diversity jurisdiction exists as between only alien corporations. Rather, plaintiffs' counsel argued that defendant Maryland -- a Liberian corporation with its only and principal place of business in New York -- had "dual" citizenship and was a domestic corporation for purposes of diversity jurisdiction, pursuant to 28 U.S.C. Sec. 1332(c).

For this proposition, counsel relied on authority in the second circuit, including the decision of Bergen Shipping Co., Lts. v. Japan Marine Services, Ltd., 386 F. Supp. 430 (S.D.N.Y. 1974) which held that a corporation incorporated under the laws of a foreign country was not an alien corporation for purposes of diversity

jurisdiction if it has its principal place of business located in the United States.

Although the authority of Bergen, supra, had never been expressly overruled and/or reversed, the United States Court of Appeals for the Second Circuit in the instant matter found that "Golub had no chance of succeeding based upon Bergen." (Appendix A, p. 3389). Moreover, the court held that the decision in Corporation Venezolona de Fomento v. Vintero Sale, 629 F.2d 786 (2d Cir. 1980) had "concluded beyond cavil" (Appendix A, id.) that a corporation incorporated in a foreign country with a principal place of business in New York was an "alien" corporation under Section 1332 -- despite subsequent authority in the second circuit and other circuits

indicating that the holding of Venezolona was unclear and that this question remained unsettled.

As Circuit Judge Pratt stated in his dissenting opinion below, an attorney should not be sanctioned for asserting "a plausible view of the law in a complicated and as yet unsettled area of diversity jurisdiction." It is respectfully submitted that if counsel's arguments can be characterized in accordance with Judge Pratt's dissent, such arguments are per se not sanctionable.

The order below sets a dangerous precedent by lowering the standard for imposing sanctions to a degree universally condemned by the bench and the bar: sanctions may be imposed for merely making an argument which is rejected. The line between a

"plausible" argument which turns out to be incorrect on one hand and a "frivolous" argument on the other has, once again, been muddled. This order demonstrates that the pendulum of judicial policy has swung so far in favor of imposing sanctions that even an attorney who cites supporting case law from his own circuit, which has never been reversed, will find himself substantially sanctioned if he does not prevail on the underlying action. If left to stand, this decision will present serious problems for the litigation bar by causing additional confusion in the already unsettled arena of attorney sanctions. Given the growing concern by the bench and bar about the pervasive abuse of Rule 11 sanctions, and the conflict among circuits on this question, it is

respectfully submitted that the United States Supreme Court grant petitioners' writ of certiorari for the purpose of articulating clearer standards concerning sanctionable arguments.

I

SANCTIONS ARE IMPROPER WHERE COUNSEL RELIES ON ESTABLISHED PRECEDENT

The standard for determining whether Rule 11 sanctions are appropriate is well known in this Circuit. In determining whether to impose sanctions under Rule 11, "the court is to avoid hindsight and resolve all doubts in favor of the signer . . . [R]ule 11 is violated only when it is 'patently clear that a claim has absolutely no chance of success,'" Oliveri v. Thompson, 803 F.2d 1265, 1275 (2nd Cir. 1986), quoting in part from the prior definitive decision in this Circuit, Eastway

Construction Corp. v. City of New York, 762 F.2d 243, 254 (2nd Cir. 1985). An award is appropriate only when the court is fully convinced that (1) a claim has "absolutely no chance of success under existing precedents" or (2) "where no reasonable argument can be advanced to extend, modify or reverse the law as it stands." Eastway, supra, 762 F.2d at 254 (emphasis supplied).

To support jurisdiction under the Convention, plaintiff's counsel relied on the precedent of Rogers, supra, for the proposition that the Convention could be invoked to enforce an interim foreign arbitral award granting unjunctive relief. To support diversity jurisdiction, plaintiff's counsel cited Bergen, supra, for the proposition that diversity juridiction is not defeated by the presence of a party with dual (U.S.

and foreign) citizenship on one side of the caption and a foreign party on the other. Both the holdings of Rogers, supra and Bergen, supra, had never been reversed or expressly overruled. Accordingly, counsel should not be sanctioned for relying thereon, since counsel's arguments were based on "existing precedents."

Similar to the within case, the Bergen Court held that the "alien" corporation which had its principal place of business in the State of New York, even though incorporated in Liberia, would be a New York citizen for the purpose of diversity. The result in Bergen was that diversity was not destroyed by the presence of aliens on both sides of the caption since plaintiff, for diversity purposes, was a citizen of New York. In the instant

action, Maryland could equally be deemed a New York citizen, as its sole place of business is in New York. The interpretation is all the more compelling because Maryland was a nominal party at best.

That the decision in Bergen, supra, had never been expressly overruled by the Second Circuit was even noted by the Tennessee District Court in Trans World Hospital Supplies, Ltd. v. Hospital Corp. of America, 542 F.Supp. 869, 874-5, n.5 (M.D. Tenn. 1982)("the Second Circuit had not yet directly addressed the issue..."); see also Rubenfeld v. Bahama Cruise Line, Inc., 613 F.Supp. 300 (S.D.N.Y. 1985). Nor was Bergen, supra, overruled by necessary implication as a result of the Second Circuit's decision in Corporacion Venezolana de Fomento v. Vintero Sales

Corp., 629 F.2d 786, 790 (2d Cir. 1980). Indeed, the holding of Venezolana, supra, on the question of diversity jurisdiction was so far from being "beyond cavil" that numerous courts since have noted the ambiguity of this decision. Trans World, supra and Rubenfeld, supra.

Although the Second Circuit decision in Venezolana neither overruled nor even limited Bergen, Rule 11 sanctions were imposed below on the threadbare argument that the majority presumes an inferential overruling of Bergen in Venezolana. As succinctly noted by Judge Pratt in his dissent (while not necessarily agreeing with Appellant's analysis), the issue of what constitutes an "alien" corporation under 1332(c) was hardly settled by Venezolana and was

certainly not "beyond cavil" (as Judge Kaufman suggested).

In sum, Appellant advanced an argument based on a reasonable interpretation of existing case law. As Justice Pratt stated in his dissent counsel should not be sanctioned for advancing an argument which is "supported by ample authority" (Appendix A).

II

SANCTIONS ARE IMPROPER WHERE COUNSEL TAKES AN ARGUABLE POSITION IN AN UNSETTLED AREA OF LAW

Rule 11 was never intended to cast a pall on attorney originality and creativity. Eastway, supra, 762 F.2d at 254. Rather, it is targeted at situations 'where it is patently clear that a claim has absolutely no chance of success..." Norris v. Grosvenor

Marketing Ltd., 803 F.2d 1281, 1288 (2d Cir. 1986). Although Rule 11 sanctions are appropriate to deter frivolous conduct on the part of attorneys, special caution is warranted when sanctions are imposed for (i) taking an arguable position (ii) in an area of law that is unsettled. (See Judge Pratt's dissenting opinion below, Appendix A).

The law concerning the question of diversity jurisdiction as applied to a foreign corporation with dual citizenship could not have been more unsettled. Section 1332 of Title 28 of the United States Code provides, in pertinent part, as follows: sub-section (a)(2) provides that diversity jurisdiction exists between "citizens of a State and citizens or subjects of a foreign state;" and sub-section (c) defines a corporation to be the citizen

of the state in which it is incorporated and in which it has its principal place of business. The "dual citizenship" standard clearly applicable to domestic corporations under Sec. 1332(c) has no statutory parallel for foreign corporations and is, accordingly, governed by common law. While the "dual citizenship" standard under 28 U.S.C. Sec. 1332(c) clearly applies to domestic corporations, the applicability of 1332(c) to foreign corporations is unsettled. See Rubenfeld v. Bahama Cruise Line, Inc., 613 F. Supp. 300 (S.D.N.Y. 1985)("The applicability of Sec. 1332(c) to alien corporations is an unsettled question in this Circuit").

The Bergen Court noted that Section 1332(c), as it relates to alien corporations, is not obvious from the face of the statute and has been the

subject of substantial debate. The Court noted that the statute distinguishes "States" of the United States from foreign "states" by spelling the former with a capital "S" and the latter with a lower case "s." (e.g., see language of 1332(a)). Almost all courts agree that this is because Congress never considered if, or how, 1332(c) applies to alien corporations. Trans World Hospital Supplies, Ltd. v. Hospital Corp. of America, supra; Salomon Englander v. CIA, LTDA. v. Israeli Discount Bank, Ltd., 494 F.Supp. 914, 918 (S.D.N.Y. 1980). Various Courts at various times have interpreted and reinterpreted how Section 1332(c) applies to foreign corporations. See Eisenberg v. Commercial Union Assurance Co., 189 F.Supp. 500 (S.D.N.Y. 1960).

Moreover, plaintiff's argument was also supported by the leading treatise on the subject, Moore's Federal Practice:

> While any case involving aliens on one or both sides may risk dangers of local prejudice or parochialism in state courts, and a federal forum would be generally preferable for disputes with international implications, the language of the Constitution would seem to preclude actions between aliens unless there is some jurisdictional basis other than diversity. Nevertheless, where a citizen of a state is joined with an alien in opposition to another alien, the conditions which are said to justify diversity jurisdiction appear to be even more clearly present, and here, as elsewhere, minimal, rather than complete diversity should permit the exercise of federal court jurisdiction (emphasis supplied).

Moore's Federal Practice, Sec. 0.75, [1-2] p. 706.8

Certainly, plaintiff cannot be held to a standard higher than one imposed upon the courts themselves. Even the

language in Venezolana, supra, made it clear that the issue had not been previously decided by the Second Circuit:

> In our most recent comment on the subject, we suggested that alien corporations are not citizens of the state in which they have their principal place of business. Clarkson Co., Ltd. v. Shaheen, 544 FD.2d 624, n. 5 (2d Cir. 1976). We need not reach the issue of whether or not 28 U.S.C. Sec. 1332(c) applies to alien corporations, however, because it is enough in this case to hold that, even assuming such dual citizenship, the fact that alien parties were present on both sides would destroy complete diversity. Hercules, Inc. v. Dynamic Export Corp., 71 F.R.D. 101 S.D.N.Y. 1976 (emphasis supplied).

In Venezolana, the Court expressly stated "we need not reach the issue of whether or not 28 U.S.C. 1332(c) applies to alien corporations" since one of the

indispensable defendants, Venezolana de Crucerios Del Caribe, CA. (a foreign corporation) had no place of business in New York and Corporacion Venezulana de Fomento (plaintiff) was a Venezuelan governmental entity also without a principal place of business in New York. In Venezolana, the court presumed that on the facts before it there were aliens on both sides of the caption. Thus, the question addressed in Bergen had never been "squarely addressed" by the Second Circuit in Venezolana.

Additionally, not present in Venezolana was the situation where the "alien" corporation was, in fact, an alter ego of a U.S. defendant. Such a situation, present in the instant action and the source of vigourous argument before the lower court, was overlooked by the majority opinion in the instant

action. Existing case law overlooked by the Court also supports plaintiff's position of Maryland's alter ego status. See Grimaldi v. Beech Aircraft Corp., 512 F.Supp. 764 (D. Kansas 1981); Coastal States Trading, Inc. v. Zenith Navigation, S.A., 446 F. Supp. 330 (S.D.N.Y. 1977).

The sum and substance of any analysis must be that a fair question existed over the issue of whether Maryland was not held to be an "alien" corporation or not. Bergen, supra. As Judge Pratt suggested, it is difficult to imagine how an argument can be frivolous when that argument concerns a complex question which has "never been rejected or even squarely addressed by this court" (Appendix A).

III

IN THE INTEREST OF DUE PROCESS, A HEARING IS REQUIRED ON THE AMOUNT OF SANCTIONS

The lower court heard reargument on the question of whether plaintiffs' counsel was entitled to a hearing on sanctions and denied plaintiff the right to such a hearing.

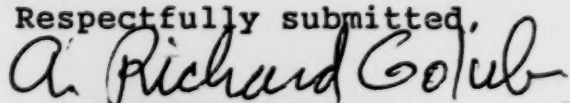
In Eastway Construction Corp. v. City of New York, 637 F.Supp. 558 (E.D.N.Y. 1986) ("Eastway II") after remand, the Court stated that whatever the rights of an attorney are regarding a hearing on the liability issue under Rule 11, the right to a hearing on issues pertaining to the amount of the sanction is absolute. "On this issue an attorney must be given the opportunity to present evidence to the trial court before he or she or the client is severely sanctioned." See, The

Committee on Federal Courts, Procedural Rights of Attorney's Facing Sanctions, 40 The Record 313, 326 (1985).

CONCLUSION

Petitioner was substantially sanctioned for relying on established precedent which had never been reversed or overruled, whether expressly or by necessary implication. Moreover, Petitioner took an arguable position in an area of law which was complex and unsettled. As Judge Pratt's dissenting opinion below indicates, sanctions under Rule 11 are improper under these circumstances. It is respectfully requested that this Court grant petitioner's writ of certiorari to address this important question of law.

Respectfully submitted,



A. RICHARD GOLUB
Attorney for Petitioner
42 East 64th Street
New York, New York 10021
(212) 838-4811

Of Counsel: Gary Graifman, Esq.
Ann Detiere, Esq.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 895—August Term, 1988

(Argued March 8, 1989 Decided May 17, 1989)

Docket No. 88-7003

INTERNATIONAL SHIPPING COMPANY, S.A., and LYGREN MARITIME SERVICES, S.A.,

Plaintiffs-Appellants,

and

A. RICHARD GOLUB, as Attorney,

Appellant,

—v.—

HYDRA OFFSHORE, INC., T. PETER PAPPAS, JAMES PAPPAS, AMERICAN GENERAL RESOURCES, INC., ASTRON MANAGEMENT CORPORATION, RICHARD JAROSS, and MARYLAND NAVIGATION CO., INC.,

Defendants-Appellees.

Before:

KAUFMAN, CARDAMONE, and PRATT,
Circuit Judges.

Appeal from an order imposing sanctions against appellant Golub pursuant to Fed. R. Civ. P. 11, in the sum of $10,000.00 entered by the United States District Court for the Southern District of New York (Leisure, *J.*).

Affirmed.

Judge Pratt dissents in a separate opinion.

A. RICHARD GOLUB, New York, N.Y., *for plaintiffs-appellants.*

TULIO R. PRIETO, New York, N.Y. (Cardillo & Corbett, New York, N.Y.) *for defendants-appellees.*

KAUFMAN, *Circuit Judge*:

Subject matter jurisdiction is the *sine qua non* of the exercise of power by a federal court. One purpose of Rule 11 of the Federal Rules of Civil Procedure is to prevent an attorney from haling a party into federal court without having performed, at the very least, a reasonable inquiry into the jurisdictional underpinning of the lawsuit.

The facts necessary for our decision are undisputed. In May 1987, International Shipping Company, S.A. ("International"), a Panamanian company, through its agent Lygren Maritime Services, S.A. ("Lygren"), a Swiss corporation, allegedly entered into an agreement with Hydra Offshore, Inc. ("Hydra"), a corporation organized under the laws of Liberia, to buy a vessel called Friend-

ship. After International had paid 10% on the total purchase price of $2,650,000.00, Hydra sold the ship to Maryland Navigation Co. ("Maryland"), another Liberian corporation with New York as its principal place of business.

On June 1, 1987, upon International's motion, the English High Court of Justice, Queens Bench Division, restrained Hydra from disposing of or moving the ship, pending the outcome of an arbitration in Britain. Shortly thereafter, appellants brought this action in the Southern District of New York. They alleged Hydra breached a contract to sell the Friendship to International and that Maryland, American General Resources, Astron Management Corp. ("Astron"), James and Peter T. Pappas, and Richard Jaross,[1] intentionally and tortiously interfered with its contractual relations with Hydra for the sale of the Friendship. The complaint asserted federal jurisdiction grounded on admiralty (28 U.S.C. § 1333), diversity of citizenship (28 U.S.C. § 1332), and the Convention on Recognition and Enforcement of Foreign Arbitral Awards (9 U.S.C. §§ 201-208).

On June 11, 1987, because of the British court's order, appellants sought an order for a preliminary injunction to prevent Maryland or Hydra from selling, moving, charting, or otherwise disposing of the vessel. Judge Leisure denied International's request for a temporary restraining

---

1 American General Resources Inc., is a domestic corporation organized under the laws of Connecticut. Richard Jaross is a resident of Connecticut and is the principal shareholder of American General. Astron is a domestic corporation with its principal place of business in New York. James Pappas, a resident of Massachusetts, is a principal shareholder in Astron and is also interested in Maryland Co. Peter Pappas resides in Connecticut and is a principal shareholder of Astron and is also interested in Maryland.

order by deleting language in the draft order which would have prevented appellees from selling or transferring the vessel pending the hearing scheduled for June 16. A copy of the order served on Friday, June 12, 1987, by appellants' attorney, however, did not reflect the deletion of the paragraph imposing a temporary restraining order, nor did the copy bear Judge Leisure's signature.[2]

The jurisdictional grounds for issuance of the injunction were attacked for various reasons by Maryland Navigation in an affidavit filed with the court June 16, 1987. On June 30, Judge Leisure heard oral argument to determine whether subject matter jurisdiction existed. Finding no basis for jurisdiction, he dismissed the action. Appellees then sought to impose Rule 11 sanctions against all appellants. The court ultimately imposed a $10,000 penalty on appellants' counsel Golub, because "[w]hile seeking the drastic and extraordinary relief of a preliminary injunction . . . [he] had clearly not examined the very basis for his presence in [the federal] Court." *International Shipping Co. v. Hydra Offshore, Inc.*, 675 F. Supp. 146, 154 (S.D.N.Y. 1987).

The district court granted counsel's motion for reargument of its decision, and some 11 months after the issuance of the original order heard reargument on both the amount and imposition of sanctions. Judge Leisure declined to amend his order, noting that no new arguments or evidence had been presented. Thereafter, counsel

---

2 The effect of the service of this purported copy of Judge Leisure's Order was to force counsel for appellees to labor over the weekend under the impression that the temporary restraining order was already in force. Whether innocent or otherwise, the service of an unconformed copy of an Order to Show Cause on extremely short notice, which incorrectly asserted the imposition of a temporary restraining order is a cause of concern.

Richard Golub reinstated his appeal, which he had withdrawn pending the outcome of reargument.[3]

Rule 11[4] mandates sanctions where it is clear that: (1) a reasonable inquiry into the basis for a pleading has not been made; (2) under existing precedents there is no chance of success; and (3) no reasonable argument has been advanced to extend, modify or reverse the law as it stands. *Cf. Norris v. Grosvenor Marketing Ltd.*, 803 F.2d 1281, 1288 (2d Cir. 1986). The Rule "explicitly and unambiguously imposes an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed." *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 253 (2d Cir. 1985). This requirement assures that lawyers are prepared to demonstrate that they have done the necessary investigation prior to appearing in court. Golub's arguments are examples of "*post hoc* sleight of hand" calculated to make plausible very tenuous jurisdictional claims. *See* Schwarzer, *Rule 11 Revisited*, 101 Harv. L. Rev. 1013, 1022 (1988).

Unfortunately, our dissenting brother misconstrues the reason sanctions were imposed in this case. In so doing he ignores the purpose for the revision of Rule 11. Its princi-

---

3 While International and Lygren also appeal the decision imposing sanctions, we read their participation as based upon the claim that the court erred in dismissing the suit for lack of subject matter jurisdiction. The appeal was concerned principally with the sanctions imposed on counsel.

4 In pertinent part, Fed. R. Civ. P. 11 states: The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

pal objective was to "reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions." Fed. R. Civ. P. 11 Advisory Committee Note. The Rule compels us to focus on counsel's conduct at the time of the submission in deciding if a reasonable inquiry has been made. *Id.*

The district court concluded that Rule 11 was violated because appellant failed to perform a reasonable inquiry into the applicable law prior to signing the complaint. Regardless of the validity of any argument Golub can now conjure to justify overlooking a well-established principal of law, he was required to conform with the law or be prepared to challenge it at the time he signed the complaint. Contrary to our dissenting brother's view, we believe that the filing of a complaint in which Golub identified alien corporations on both sides of the litigation revealed that he was unaware of the complete diversity requirement. This fact is plainly revealed by the complaint itself, the colloquy before the court, and Golub's contention that he should not be punished because he did not receive the opposition's papers raising jurisdictional objections until the day before oral argument.

As we stated, appellants' complaint alleged federal jurisdiction founded upon diversity, admiralty, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The admiralty and Foreign Arbitral Awards grounds, however, were both found to be jurisdictionally deficient. Golub does not contest those findings on appeal.[5]

---

5 While appellants may have abandoned arguments for the court's subject matter jurisdiction based upon admiralty and the Convention, we can and do take note that these claims were defective at the time the pleadings were signed, a fact that would have been apparent after a reasonable inquiry.

Golub's principal claim on appeal rests upon the premise that jurisdiction existed because Maryland Navigation Company's principal place of business was New York, rendering it solely a citizen of that state for purposes of diversity under § 1332(c).[6] As support for this proposition, Golub cites dicta in *Bergen Shipping Co. v. Japan Marine Services Ltd.*, 386 F. Supp. 430 (S.D.N.Y. 1974).

The general rule requiring complete diversity between opposing parties is explicit and unequivocal. As Judge Leisure properly concluded, "[a] cursory review of a hornbook or digest would have revealed [the] jurisdictional defect to [appellants'] counsel." *International Shipping*, 675 F. Supp. at 152. *See* 1 Moore's Federal Practice ¶ 0.75 (2d ed. 1986); 13B C. Wright, A. Miller, E. Cooper, Federal Practice and Procedure § 3604 (2d ed. 1984). Clearly, this rule applies in cases where aliens appear on both sides of a case. *Corporation Venezolana de Fomento v. Vintero Sales Corp.*, 629 F.2d 786, 790 (2d Cir. 1980) ("[T]he presence of aliens on two sides of a case destroys diversity jurisdiction."), *cert. denied*, 449 U.S. 1080 (1981). *Accord*

Judge Leisure correctly ruled that admiralty jurisdiction under 28 U.S.C. § 1333, does not exist in actions involving the breach of a contract for the sale of a vessel. *See CTI-Container Leasing Corp. v. Oceanic Operations Corp.*, 682 F.2d 377, 380 n.4 (2d Cir. 1982); *The Ada*, 250 F. 194, 197-98 (2d Cir. 1918) (Rogers, *J.*, concurring).

Appellants' contentions that jurisdiction could be premised on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §§ 201-208 were also appropriately rejected. The district court found the Convention inapplicable in this case because the party invoking its provisions did not seek either to compel arbitration or to enforce an arbitral award. *See International Shipping Co. v. Hydra Offshore*, 675 F. Supp. 146, 150-153.

6 Appellants agreed at the June 30, 1987 hearing to drop Hydra in order to preserve diversity under § 1332. This, however, still left International and Lygren—both foreign corporations—on one side of the litigation and Maryland, a Liberian corporation on the other.

ITT v. Vencap Ltd., 519 F.2d 1001, 1015 (2d Cir. 1975). *See also Hercules Inc. v. Dynamic Export Corp.*, 71 F.R.D. 101 (S.D.N.Y. 1976).

In *Venezolana*, this court dealt with the applicability of 28 U.S.C. § 1332(c) to alien corporations. We decided that even if a corporation organized under the laws of a foreign nation maintains its principal place of business in a State, and is considered a citizen of that State, diversity in nonetheless defeated if another alien party is present on the other side of the litigation. *Venezolana*, 629 F.2d at 790. We postulated a situation in which such corporations would have "dual citizenship"—being regarded as citizens of both the State of their principal place of business and the nation under whose law it had been incorporated. *Id.* To the extent that the dicta in *Bergen* suggested that under § 1332(c) a corporation might be considered *solely* a citizen of the State of its principal place of business, its force was vitiated by our subsequent decision in *Venezolana*.[7]

In view of these precedents we are forced to conclude that a reasonable inquiry into the current law would have precluded the argument counsel made at the hearing on June 30—that "[w]hether or not you have aliens on both sides [of a litigation is] irrelevant once their principal places of business are here in New York." Nor could he have stated, after opposing counsel's extended discussion of the controlling cases, "I don't know what the reference is to dual citizenship." Under current Second Circuit doctrine it would have been apparent—after a reasonable

---

7 In *Bergen*, the court premised its exercise of power on the existence of admiralty jurisdiction, rather than on the existence of diversity under its analysis of § 1332(c). *Bergen Shipping Co. v. Japan Marine Services Ltd.*, 386 F. Supp. at 434.

examination of the law—that Golub had no chance of succeeding based upon *Bergen*.[8]

In addition, we search in vain for any principled argument advanced by counsel to reverse or modify our holding in *Venezolana*. Instead, he insists that what was decided in that case was not, in fact, decided at all. Yet in *Venezolana* we concluded beyond cavil that, in this circuit, a corporation organized under the laws of a foreign nation remains an *alien* corporation under § 1332, even if its principal place of business is in one of the States. 629 F.2d 786, 790. We made this conclusion unmistakable by citing with approval *Hercules, Inc. v. Dynamic Export Corp.*, 71 F.R.D. 101 (S.D.N.Y. 1976), a case that criticized and rejected the *Bergen* analysis.

Appellants also claim that Judge Leisure erred in failing to hold an evidentiary hearing to determine the amount of sanctions—on the supposition that sanctions were imposed to compensate appellees. This argument fails for at least two reasons. At the outset it should be stated that appellants were permitted to reargue the Rule 11 motion, but failed to present any new evidence to attack the imposition or amount of sanctions. Moreover, we have previously rejected the notion that the imposition of sanctions pursuant to Rule 11 requires an evidentiary hearing. *Oliveri v. Thompson*, 803 F.2d 1265, 1280 (2d Cir. 1986), *cert. denied sub nom., County of Suffolk v. Graseck*, 480 U.S. 918 (1987); *see also* Fed. R. Civ. P. 11 Advisory

---

8 Judge Pratt's reliance upon *Chok v. S&W Berisford, PLC*, 624 F. Supp. 440 (S.D.N.Y. 1985) is misplaced. In *Chok*, defendants moved for imposition of sanctions alleging that the action "could only have been brought for 'an improper purpose such as to harass or to coerce unnecessary delay or needlessly increase the cost of litigation.' " *Id.* at 441. The court in *Chok*, did not consider the adequacy of plaintiffs' prefiling examination of the law. Consequently, that case is of little relevance to our determination.

Committee Note ("[T]he court must to the extent possible limit the scope of sanction proceedings to the record.").

In any event, sanctions were imposed by the court below primarily to reprove appellants' attorney rather than to compensate the opposing side for its expenditures in resisting the action. *See International Shipping*, 675 F. Supp. at 154-55. It is well settled that Rule 11 empowers judges with discretion to award that portion of a defendant's attorney's fee thought reasonable to serve the sanctioning purpose of the Rule. *See, e.g., Eastway Construction Corp. v. City of New York*, 821 F.2d 121, 123 (2d Cir. 1987) ("Eastway II"). The scope of that discretion is broad. *See, e.g., Calloway v. Marvel Entertainment Group*, 854 F.2d 1452, 1476 (2d Cir. 1988), *cert. granted sub nom. Pavelic & Leflore v. Marvel Entertainment Group*, 109 S. Ct. 1116 (1989). And, an appellate court will apply an abuse of discretion standard upon review. *Id.* As we noted in *Eastway II*, "[t]he concept of discretion implies that a decision is lawful at any point within the outer limits of the range of choices appropriate to the issue at hand . . . ." 821 F.2d at 123.

The district court had before it evidence that appellees expended $48,031.33 in the period between June 12 and June 30, 1987, opposing appellants' motion for injunctive relief. Finding that a considerable amount of the work performed by appellees could be used in related court actions, the court declined to impose as sanctions the full amount of the costs incurred. Instead, Judge Leisure, after considering the nature of the violation of Rule 11 and the context in which it arose, with some reticence, imposed sanctions against counsel in the sum of $10,000. We cannot conclude that this amount exceeds "the outer limits of the range of choices appropriate to the issue . . . ."

Accordingly, Judge Leisure did not abuse his discretion in fashioning the sanction.

Appellants' final argument is that the district court should have dropped Maryland Navigation from the litigation and retained jurisdiction over the case. But Judge Leisure, during the June 30 hearing on the preliminary injunction application, specifically asked Golub whether he would be willing to strike Maryland as a defendant in the action to preserve diversity. Golub refused, arguing: "If we drop Maryland—the title to the ship is now in Maryland's name—I don't know how we could get any relief against [them]." Research reveals no precedent that indicates that it is error for the court to fail to dismiss a party from an action so as to preserve diversity despite the plaintiff's own choice to retain that party and in the absence of any motion to have that party removed.

Whether sanctions under Rule 11 may be imposed for an attorney's failure to conduct a proper pre-trial inquiry into the court's subject matter jurisdiction is a question that is quite distinct from the decision to impose sanctions for a frivolous appeal under Rule 38 Fed. R. Civ. P. We do not believe that Rule 38 sanctions are warranted here.

The quality of Justice depends upon our ability to control the flood of litigation. Rule 11 requires that members of the bar avoid haphazard, superficial research. That requirement places the responsibility for properly invoking the power of the court on counsel as officers of the court. On these facts, that standard simply has not been met. Accordingly, we affirm.

PRATT, *Circuit Judge*, dissenting:

In this case the majority upholds a sanction against an attorney for wrongly claiming federal jurisdiction even though he asserted a plausible view of the law in a complicated and as yet unsettled area of diversity jurisdiction. The majority implicitly holds that dicta in one of our previous decisions, which expressly left open the issues raised by Golub, can somehow be read as a "holding" of this court which "established beyond cavil" that the argument advanced by Golub stood absolutely no chance of succeeding. Because I believe that Golub's jurisdictional theory rests on a sensible, albeit erroneous, reading of the diversity statute, is supported by ample authority, and has never been rejected or even squarely addressed by this court, I must respectfully dissent from this harsh application of rule 11.

At the outset, it is important to identify the conduct for which Golub was and was not sanctioned. First, he was *not* sanctioned (although perhaps he should have been) for allegedly serving on his adversary a copy of an order to show cause that left in a temporary restraining order that had been deleted by the court.

Second, he was *not* sanctioned for failing to observe the black-letter proposition that an alien party cannot acquire diversity jurisdiction over another alien party. Rather, he *was* sanctioned for arguing that Maryland Navigation, a corporation chartered in Liberia but having its principal place of business in New York, should be considered a citizen only of New York for diversity purposes, thus preserving federal jurisdiction over the action.

But Golub's argument flows readily from the language of the diversity statute. Under 28 U.S.C. § 1332(c), a corporation is deemed "a citizen of any State by which it has

been incorporated and of the State where it has its principal place of business". The statute defines the term "State", with an upper-case "S", to exclude foreign nations, 28 U.S.C. § 1332(d), and consistently refers to foreign nations by the use of the term "state", with a lower-case "s". 28 U.S.C. § 1332(a)(2), (3), (4). The two versions of the term are not interchangeable.

A straightforward reading of the statute would therefore make Maryland Navigation a citizen of New York, the "State" where it has its principal place of business, but not of Liberia, the place of its incorporation, because Liberia by definition is not a "State" of the United States in which Maryland Navigation is incorporated.

The majority nevertheless suggests that a "cursory review" of hornbook law would have demonstrated the fallacy of this argument. Although I can only guess as to what, if anything, superficial research would uncover, my own reading of the treatises cited by the majority reveals that they support Golub's position far more than they undermine it. For example, Professors Wright, Miller and Cooper argue that a plausible, and if applied to these facts, preferable reading of the diversity statute would

> treat the foreign corporation *as having a single domestic citizenship rather than dual citizenship*. This approach would be most appropriate when the alien corporation's principal place of business is in an American state. * * *
>
> Moreover, there may be affirmative reasons why Congress should provide a federal forum. For example, when the dispute between an alien and a foreign corporation with a principal place of business in the United States arises out of local activities, a federal court should be available.

13B C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3628, at 668-69 (2d ed. 1984) (citations omitted); *see also* 1 J. Moore, J. Lucas, H. Fink, D. Weckstein & J. Wicker, *Moore's Federal Practice* ¶ 0.77[2.—3] (2d ed. 1988) (similar); Note, *Alien Corporations and Federal Diversity Jurisdiction*, 84 Colum. L. Rev. 177 (1984) (arguing in favor of a single-domestic-citizenship interpretation of diversity statute as applied to foreign-chartered, domestically-located corporations).

Notwithstanding the respectable authority supporting Golub's interpretation of the statute, the majority relies on an exaggerated reading of our *Venezolana* decision to justify the sanction. In that case, we held that the district court properly exercised its ancillary jurisdiction in deciding a counterclaim brought against a Venezuelan party by a Swiss corporation that had its principal place of business in New York, where federal jurisdiction over the principal action was properly founded on the Edge Act.

Without addressing the particular interpretation of the diversity statute that would have supported Golub's present claim for federal jurisdiction, we noted that two *other* approaches to the statute would have deprived the court of jurisdiction to hear the counterclaim if it had been independently presented. First, we suggested that § 1332(c) might not even apply to alien corporations, leaving intact the traditional rule that treated corporations as citizens only of their place of incorporation. Second, we stated that "[w]e need not reach the issue of whether or not 28 U.S.C. § 1332(c) applies to alien corporations," because even if we assumed that the statute did apply, and that it created *dual* citizenship, the company chartered in Switzerland would still retain its alien status despite its New York principal place of business.

Thus, in dealing with the problem of a foreign corporation having its principal place of business in this country, the *Venezolana* opinion discusses two possible resolutions: (1) citizen only of foreign state of incorporation and (2) dual citizenship. It fails to even mention, however, let alone clearly reject, a third possible interpretation of 1332(c) now advanced by Golub: citizen only of domestic principal place of business. I cannot understand how, years after the fact, we can fairly transform a brief section of casual discussion of two other issues into a full-blown "holding" of this court on the third issue; even less can I accept the conclusion that our earlier incomplete treatment of this subject not only had the supposed effect of clarifying this complicated, rarely litigated area of diversity jurisdiction, but also made any further argument on the subject sanctionable.

Ironically, less that two years before Golub commenced this action in the southern district, but five years after *Venezolana*, a different court in the southern district held that rule 11 was *not* violated where an attorney advanced an argument identical to the one sanctioned here. *See Chok v. S & W Berisford, PLC*, 624 F. Supp. 440, 443 (S.D.N.Y. 1985). In *Chok*, Judge Sweet (who perhaps should understand the problem better than most since he was also the district judge in *Venezolana*) ultimately rejected the argument that a foreign-incorporated, domestically-based corporation should be deemed a citizen only of its domestic principal place of business; but he held that the attorney who asserted the argument could not be sanctioned because "due to the lack of uniform authority on the subject of the citizenship of alien corporations under § 1332(c), the action * * * was not brought without conceivable hope of success." *Id.* That case was

not appealed, and this circuit has not, from then until now, otherwise addressed this diversity issue.

If rule 11 is to fulfill its purpose of deterring frivolous litigation, it is critical that courts articulate clear, objective standards by which attorneys can reliably measure their conduct and that we avoid the corrosive effect of arbitrary, seemingly contradictory applications of the rule. Here, identical arguments asserted in the same district were held in one case not to violate rule 11, but to "egregious[ly]" violate it in the next; yet the same body of appellate and statutory law was available to both courts. I fear the majority's ruling today may prove to be a step backward in the evolution of comprehensible and fair standards for applying rule 11.

720—5-19-89 • USCA—80004 FY89

RECORD PRESS, INC., 157 Chambers St., N.Y. 10007 (212) 619-4949

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL SHIPPING COMPANY, S.A., :
LYGREN MARITIME SERVICES, S.A.,
:

Plaintiffs,

-against-

HYDRA OFFSHORE, INC., T. PETER PAPPAS, JAMES PAPPAS, AMERICAN GENERAL RESOURCES, INC., RICHARD JAROSS, ASTRON MANAGEMENT CORPORATION and MARYLAND NAVIGATION CO., INC.,

Defendants.

OPINION & ORDER

APPEARANCES

A. RICHARD GOLUB
42 East 64th Street
New York, New York 10021
A. Richard Golub, Esq.
Gary S. Graifman, Esq.
of counsel

ATTORNEY FOR PLAINTIFFS

CARDILLO & CORBETT
29 Broadway
New York, New York 10006
Robert V. Corbett, Esq.
Christophil B. Costas, Esq.
Tulio Prieto, Esq.
Peter G. Drakos, Esq.
of counsel

ATTORNEY FOR DEFENDANTS
T. PETER PAPPAS, ASTRON MANAGEMENT
CORPORATION AND
MARYLAND NAVIGATION CO., INC.

LEISURE, District Judge:

On June 9, 1987, plaintiffs International Shipping Company, S.A. ("International") and Lygren Maritime Services, S.A. ("Lygren") commenced the instant action by filing a complaint alleging that defendant Hydra Offshore, Inc. ("Hydra") breached a contract for the sale of the vessel BRAZILIAN FRIENDSHIP ("the FRIENDSHIP") to plaintiff International. Lygren was the broker that arranged the sale. Plaintiffs also allege that the other defendants intentionally and tortiously interfered with existing contractual relations in connection with the sale of the FRIENDSHIP by Hydra to International. Plaintiffs applied for a preliminary injunction by way of Order to Show Cause dated June 11, 1987, seeking to enjoin defendants from using,

moving or disposing of the FRIENDSHIP. After hearing arguments on June 30, 1987, the Court denied the application for injunctive relief and dismissed plaintiff's complaint because the Court lacked subject matter jurisdiction of the action.

The case is now before the Court on the motion of defendants T. Peter Pappas, Astron Management Corporation ("Astron") and Maryland Navigation Co., Inc. ("MNC") for the imposition of sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. For the reasons stated below, defendants' motion is granted.

FACTUAL BACKGROUND

Plaintiffs' complaint alleged that on or about May 15, 1987, plaintiffs agreed with defendant Hydra that Hydra

would sell the FRIENDSHIP to International for $2,650,000, with ten percent of the purchase price to be paid within three banking days of the signing of the agreement. Complaint, paragraph 14. On May 25, 1987, the agreement was formalized. Id. at paragraph 16. On May 27, 1987, International deposited ten percent of the purchase price with the Royal Bank of Scotland on behalf of Hydra. Id. at 18. On May 28, 1987, Hydra sought to return the downpaymant and repudiate the contract. Id. at paragraph 19.

The complaint goes on to allege that some time after May 25, 1987, Hydra agreed to sell and did sell the FRIENDSHIP to defendants Richard Jarros, American General Resources, Inc., James Pappas. T. Peter Pappas, Astron and MNC. Id. at paragraph 26. Plaintiffs

sought specific performance of the contract, $12,500,000 in compensatory damages and $20,000,000 in exemplary damages.

International commenced an arbitration in the United Kingdom entitled In the Matter of Arbitration Between International Shipping Company, S.A. and Hydra Offshore, Inc. On June 1, 1987, International obtained an order from the High Court of Justice, Queens Bench Division, Commercial Court. restraining Hydra from transferring possession of the FRIENDSHIP.[1]

On June 11, 1987, plaintiffs applied for injunctive relief by way of Order to Show Cause. The Court signed the Order to Show Cause, but deleted a paragraph that temporarily restrained defendants from selling or transferring the vessel (hereinafter "temporary restraining

order"). The Court directed that service be made on or before June 12, 1987. On Friday, June 12, 1987, Cardillo & Corbett, counsel for defendants T. Peter Pappas, Astron and MNC, received a letter from A. Richard Golub, Esq., counsel for plaintiffs that stated:

> Pursuant to our conversations of June 10th and 11th, I am serving you with a copy of the Order to Show Cause signed by Judge Leisure in the above pending action.

Affidavit of Tulio R. Prieto, Esq., sworn to on July 15, 1987, in Support of Defendants' Motion for Imposition of Sanctions, Exhibit A (hereinafter "Prieto Aff."). The enclosed copy of the Order to Show Cause, however, was not a conformed copy, and did not reflect, or otherwise indicate, that I had deleted the paragraph containing the temporary restraining order. Id.

Defendants' counsel therefore labored through the weekend under the impression that said temporary restraining order was in effect. Prieto Aff. at paragraph 7.

At the hearing on Tuesday, June 16, 1987, defendants appeared in compliance with the order to show cause why a preliminary injunction should not be issued. Plaintiffs then urged the Court to hold an evidentiary hearing. Transcript of June 16, 1987 hearing at 5-6, 9,12.[2] Defendants urged the Court to hear argument, rather than hold an evidentiary hearing, on whether a preliminary injunction should be issued because defendants could "convince the court as a matter of law and without any question of fact that there should not be a preliminary injunction or that there shouldn't even be an application

for a permanent injunction." Transcript of June 16 hearing at 10. The Court then set June 25, 1987, as the date for hearing arguments from counsel. The June 25 date was rescheduled for June 30, 1987. At the June 30 proceeding, the Court heard arguments on whether it had subject matter jurisdiction over the action and concluded that it did not. The Court therefore dismissed the complaint.

LEGAL DISCUSSION

As previously stated, defendants have moved for the imposition of sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Rule 11, as amended in 1983 provides in pertinent part:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper;

> that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass of to cause unnecessary delay or needless increase in the cost of litigation.
>
> * * *
>
> If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Fed. R. Civ. P. 11 (as amended, 1983). Rule 11 was amended in 1983 to provide a more expansive standard for the imposition of sanctions. As Judge Kaufman, joined by Judges Oakes and Meskill, noted in the seminal case on amended Rule 11,

> [n]o longer is it enough for an attorney to claim that he acted in good faith, or that he personally was unaware of the groundless nature of an argument or claim. For the language of the new Rule 11 explicitly and unambiquously imposes an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed. Simply put, subjective good faith no longer provides the safe harbor it once did.

Eastway Construction Corp. v. City of New York, 762 F.2d 243, 253 (2d Cir. 1985) ("Eastway I"). The Court went on to note that

> sanctions shall be imposed against an attorney and/or his client when it appears that a pleading has been interposed for any improper purpose, or where, after reasonable inquiry, a competent attorney could not form a reasonable belief that the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.

Id. at 254 (emphasis in original).

The Court made clear that when Rule 11 has been violated, a district court must impose appropriate sanctions. Id. at 254 n.7.

Later cases have further guidance to district courts in considering when the imposition of sanctions is proper. In Oliveri v. Thompson, 803 F.2d 1265 (2d Cir. 1986), cert. denied sub nom. County of Suffolk v. Graseck, ___ U.S. ___, 107 S. Ct. 1373 (1987), Judge Pratt, joined by Judges Newman and Pierce, ruled that the district court "is to avoid hindsight and resolve all doubts in favor of the signer. As we stated in Eastway, rule 11 is violated only when it is 'patently clear that a claim has absolutely no chance of success.'" Oliveri, 803 F.2d at 1275 (quoting Eastway, 762 F.2d at 254). Similarly, in Norris v. Grosvenor Marketing Ltd.,

803 F.2d 1281 (2d Cir. 1986), Judge Lumbard, joined by Judges Kearse and Winter, found that sanctions must be imposed under Rule 11 if there was "no chance of success under existing precedents, and no reasonable argument has been advanced to extend, modify or reverse the law as it stands". Id. at 1288.[3]

The Court will therefore impose sanctions only if it is patently clear that the complaint was filed without reasonable inquiry into whether it was warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. In the instant case, the complaint alleged:

> The Court's jurisdiction and the claims of the plaintiff are based, inter alia, upon 28 U.S.C. Section 1333, and upon 28 U.S.C. Section 1332 as a result of

> diversity of citizenship and the amount in controversy being in excess of 10,000.00 and upon Title IX of the U.S.C. Section 14, entitled, "Convention On Recognition And Enforcement Of Foreign Arbitral Awards" ("Arbiration Treaty").

Complaint paragraph 1. The Court now considers each basis of jurisdiction asserted by plaintiffs in turn to determine whether it is patently clear that the Court lacked subject matter jurisdiction over the action.

1. Admiralty Jurisdiction 28 U.S.C. Section 1333

Section 1333 of Title 28 of the United States Code provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty of maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

> (2) Any prize brought into the United States and all proceeding for the condemnation of property taken as prize.

28 U.S.C Section 1333. The gravamen of the complaint is breach of a contract for the sale of a vessel, and tortious interference with that contract. It is elementary hornbook law that a contract for the sale of a vessel is not within the admiralty jurisdiction of the district courts. G. Gilmore & C. Black, The Law of Admiralty section 1-10 at 26 (2d ed. 1975); E. Jhirad, A. Sann, B. Chase & M. Chynsky Benedict on Admiralty Section 187 at 11-32 (6th ed. 1985). Numerous courts have also stated the proposition that a contact for the sale of vessel is not within admiralty jurisdiction. See, e.g., CTI Container Leasing Corp. v. Oceanic Operations Corp., 682 F.2d 377, 380 n.4 (2d Cir.

1982); The Ada, 250 F. 194, 197-98 (2d Cir. 1918) (Rogers, J., concurring); Economu v. Bates, 222 F. Supp. 988, 991 (S.D.N.Y. 1963); Twin City Barge & Towing Co. v. Aiple, 709 F.2d 507, 508 (8th Cir. 1983).

In the instant case, plaintiffs alleged nothing in the complaint that would remove this from the scope of the general principle that cases involving contracts for the sale of a vessel are not admiralty cases. Nor did plaintiffs address the issue in their papers filed on June 29, 1987, in support of their application for injunctive relief. Plaintiffs' counsel was asked repeatedly[4] at the June 30 proceeding to identify the basis of the Court's admiralty jurisdiction, but his answers did not address the issue at all. Plaintiffs' counsel relied on three case

sources. The first, Carolina Power & Light Co. v. Uranex, 451 F. Supp. 1044 (N.D. cal. 1977), not only fails to address the issue sale of a vessel, but does not even mention admiralty jurisdiction. Plaintiffs' counsel also relied on Paramount Carriers Corp. v. Cook Industries, 465 F. Supp. 599 (S.D.N.Y. 1979), and Construction Exporting Enterprises, UNECA v. Nikki Maritime Ltd., 588 F. Supp. 1372 (S.D.N.Y. 1983). Although both these cases deal with admiralty jurisdiction, neither mentions contracts for the sale of a vessel.

The arguments advanced by counsel at the June 30 proceeding amply demonstrate that no inquiry at all, not to mention a reasonable inquiry, was made on the point of whether admiralty jurisdiction was proper.

Now, after the dismissal of the complaint, when faced with the possibility of the imposition of sanctions, plaintiffs' counsel argues that

> [a]lthough defendants cavalierly dismissed the notion of any maritime basis of jurisdiction, the contract of sale included a contract of affreightment with respect to the iron ore aboard the Friendship. The argument cannot be dismissed that the entire relationship between plaintiffs and Hydra might not fall "within the pale of admiralty jurisdiction".

Plaintiffs' Memo at 26-27 (quoting Paramount Carriers, supra, 465 F. Supp. at 601). Passing over the fact that the instant motion does not concern defendant Hydra, plaintiffs have not raised this objection until now. But the burden is on the plaintiff to show that the Court has subject matter jurisdiction over an action.[5] Moreover, even if the contract for

affreightment would bring that part of the action within the admiralty jurisdiction of the Court, the remainder of the action would not necessarily be subject to admiralty jurisdiction. As a noted treatise on the subject has stated, "[a] contract, not maritime in itself, which is collateral to a maritime contract does not by reason of its relation to such contract acquire a maritime character and is not ordinarily cognizable in admiralty." 1 Benedict on Admiralty, supra, section 184 at 11-9.

The papers submitted to the Court and the arguments of plaintiffs' counsel at the June 30 proceeding made no arguments for extension, modification or reversal of existing law. Plaintiffs' counsel had clearly not made any inquiry into the admiralty basis of jurisdiction. It is therefore patently

clear that the Court lacks admiralty jurisdiction over this action.

2. Diversity Jurisdiction 28 U.S.C. Section 1332

Section 1332 of Title 28 of the United States Code provides:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between --
>
> (1) Citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
>
> (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

* * *

> (c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. . . .

28 U.S.C. 1332. The law in this Circuit is clear that "the presence of aliens in two sides of a case destroys diversity jurisdiction." Corporacion Venezolana de Fomento v. United States, 629 F.2d 786 (2d Cir. 1980), cert. denied, 449 U.S. 1080 (1981) (citing IIT v. Vencap Ltd., 519 F.2d 1001, 1015 (2d Cir. 1975)).

Plaintiffs in the instant case concede that they are both foreign corporations. Complaint paragraphs 3, 4. Plaintiffs allege that defendants Hydra and MNC are foreign corporations. Complaint paragraphs 5, 10. There are therefore aliens on both sides of the

case, and diversity jurisdiction is defeated.

At the June 30 proceeding, plaintiff's counsel argued that Hydra could be dropped from the action because it was a nominal defendant.[6] Transcript of June 30 proceeding at 10. But this does not address the issue of diversity jurisdiction over MNC, which is also a foreign corporation.

At the June 30 proceeding plaintiff's counsel asserted that "[w]hether or not you have aliens on both sides, it's irrelevant once their principal places of business are here in New York." Transcript of June 30 proceeding at 8-9. The complaint did indeed allege that MNC's principal place of business was New York. The Court in Venezolana addressed this issue, and concluded that Clarkson Co., Ltd. v.

Shaheen, 544 F.2d 624 (2d Cir. 1976), had left open the question whether alien corporations are citizens of the state in which they have their principal place of business. Venezolana, 629 F.2d at 790. But the Court decided in Venezolana that the issue was irrelevant, for even if such dual citizenship exists, "the fact that alien parties were present on both sides would destroy complete diversity." Id. (emphasis in original) (citing Hercules, Inc. v. Dynamic Export Corp., 71 F.R.D. 101 (S.D.N.Y. 1976). Thus, accepting plaintiffs' allegation that MNC is doing business in New York, MNC is nevertheless an alien for diversity purposes, and diversity jurisdiction is therefore destroyed.

A cursory review of a hornbook or digest would have revealed this

jurisdictional defect to plaintiffs' counsel. As the District Court for the District of Columbia observed on this point in a closely analogous case,

> [m]ovants had knowledge of the foreign citizenship of plaintiff and two of the defendants, and most certainly should have known of the complete diversity rule. If they had any doubts whatsoever as to the applicability of that rule in a suit involving foreign nationals, those doubts could have been put to rest by consulting the most basic of reference works. Moore's Federal Practice, for example, states quite succinctly that "[w]hen there are alien parties on both sides of the controversy jurisdiction will be found lacking even though they are citizens of different foreign countries," 1 J. Moore, J. Lucas, H. Fink, D. Weckstein & J. Wicker, Moore's Federal Practice paragraph 0.75 (2d ed. 1986); West Federal Digest devoted an entire keynote to the subject of "Controversies between a state or citizen thereof and foreign states, citizens or subjects," and lists no less than seventeen cases in which courts have either held or noted that diversity is lacking when foreign nationals are on both sides of a suit, 47 West's Federal Practice Digest 3d

> 543-50 (1985); and Wright, Miller and Cooper note that since the Supreme Court's 1829 decision in Jackson v. Twentyman, 27 U.S. (2 Pet.) 136, 7 L. Ed. 374 (1829), "the federal courts consistently have denied jurisdiction over suits between aliens." 13B C. Wright, A. Miller, E. Cooper, Federal Practice and Procedure section 3604 (2d ed. 1984). Contrary to movants' contention, the diversity rule regarding foreign nationals is neither little-known nor obscure, and more importantly, even the most cursory research could not have failed to disclose it.

Rowland v. Fayed, 115 F.R.D. 605 (D.D.C. 1987) (footnote omitted). Plaintiffs' counsel in the instant case should also have consulted those basic research tools. Once again, it is evident that plaintiffs' counsel did not conduct any inquiry into the applicable law, not to mention a reasonable inquiry.[7]

3. Convention on the Recognition and Enforcement of Foreign Arbitral Awards 9 U.S.C. Sections 201-208

Section 203 of Title 9 of the United States Code provides:

> An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S.C. section 203. Section 202 specifies what actions fall under the Convention:

> An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention.

9 U.S.C. section 202.

At the June 30 proceeding, the Court found that actions covered by the Convention are those in which the party invoking the Convention seeks either the

recognition of an agreement in an action to compel arbitration or the enforcement of an arbitral award. Transcript of June 30 proceeding at 39. Because this case involved neither an action to compel arbitration nor enforcement of an arbitral award, the Court found that it did not have subject matter jurisdiction pursuant to the Convention. Id. at 39-41.[8] Even if there were an arbitral award or motion to compel arbitration, however, the Convention could confer subject matter jurisdiction on this Court only as to defendant Hydra. Only Hydra had an agreement to arbitrate with plaintiffs. The remaining defendants had no agreement at all with plaintiffs, and certainly no agreement to arbitrate. It is axiomatic that "a party cannot be required to submit to arbitration any disputes which

he has not agreed to submit". Coudert v. Paine Webber Jackson & Curtis, 705 F.2d 78, 81 (2d Cir. 1983). It is therefore clear beyond cavil that the Court lacks jurisdiction pursuant to the Convention over all defendants except possibly Hydra.[9]

As the Second Circuit has frequently noted, a great concern with imposition of sanctions pursuant to Rule 11 is that it may chill the exercise of legal creativity and stifle enthusiasm for zealous advocacy. See, e.g., Eastway, 762 F.2d at 254. A second problem, perhaps not as readily apparent to the appellate courts, is that imposition of sanctions in one case may encourage parties to bring motions for sanctions under Rule 11 in other cases. This is not a salutary development, for the limited time of the district courts is

then consumed with Rule 11 motions that are often frivolous and baseless themselves.[10] This Court therefore imposes sanctions with great reluctance.

This is, however, an egregious example of the violation of the spirit and letter of Rule 11, as amended. While seeking the drastic and extraordinary relief of a preliminary injunction brought on by way of Order to Show Cause, plaintiff's counsel had clearly not examined the very basis for his presence in this Court. A cursory review of hornbook law and the facts of this case would have indicated that there was no basis for this Court to exercise subject matter jurisdiction.

Plaintiffs' counsel complains that he received defendants' papers raising the jurisdictional objections only the day before the June 30 proceedings.[11]

Yet the obligation imposed by Rule 11 to conduct a reasonable inquiry into the facts and law underlying a pleading, motion or other paper is not triggered only when such paper is challenged. Rather, the attorney's signature "constitues a certificate that he has read the pleading, motion or other paper; that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law. . . ." Fed. R. Civ. P. 11 (emphasis added). Plaintiffs' counsel therefore cannot be heard to complain now that his adversary did not raise these issues earlier, for Rule 11 imposed upon him the duty to explore these questions before signing and filing the complaint. Because Rule 11 has been violated, the Court must impose

appropriate sanctions. Eastway, supra, 762 F.2d at 254 n.7; Norris v. Grosvenor Marketing Ltd., supra, 803 F.2d at 1288.

The Court of Appeals for the Second Circuit has recently held that a district court need not award a defendant entitled to fees pursuant to Rule 11 the full amount of the fees based on the hours reasonably expended by counsel. Eastway Construction Corp. v. City of New York, 821 F.2d 121, 122-23 (2d Cir.), cert. denied, ___ U.S. ___, 108 S. Ct. 269 (1987) ("Eastway II'). The Court found that while "district judges have discretion in determining the amount of a defendant's fee that would be reasonable to serve as a sanction," such discretion must "be exercised within reasonable limits." Id. at 123.

In this case, defendants' counsel expended $48,031.33 in defending the action. Prieto Aff., Exhibit C. Had plaintiffs' counsel performed an inquiry into the basis of jurisdiction in this Court, this action would not have been brought, and none of those fees would have been incurred in the matter before this Court. But the work of defendants' counsel was not for naught; an action is now pending in state court relating to the same issues. Much of the work done by defendants' counsel on the issue of whether an injunction should issue and on the merits of the case can therefore be used in the state court action. In any event, the purpose of Rule 11 is not only to compensate the aggrieved party for any losses incurred, but to sanction those who have violated Rule 11. Eastway II, 821 F.2d at 122-23. The

Court will therefore impose an award of attorney's fees that is sufficient "to serve the sanctioning purpose" of Rule 11. Id. at 123. After considering the purposes of Rule 11 and the fact that much of the work done by defendants' counsel may be used in the pending state court action, the Court concludes that the amount of the sanction should be $10,000.

Rule 11 allows for the imposition of sanctions against one who signs a pleading, a party, or both. In this case, it is clear that the full award must be imposed against plaintiffs' counsel. Plaintiffs doubtless feel that they have a valid legal claim. They should not be held responsible for their attorney's failure to inquire into jurisdictional matters and bring the action in the appropriate forum.

CONCLUSION

Defendants' motion for sanctions pursuant to Rule 11 is hereby granted. A Richard Golub is ordered to pay $10,000 to T. Peter Pappas, Astron Management Corporation and Maryland Navigation Co., Inc. A. Richard Golub is ordered to file a certificate of compliance with the Clerk of the Court within ten days from the date hereof.

Because the complaint has already been dismissed, the filing of the certificate of compliance will close the case.

SO ORDERED

Dated: New York, New York
December 16, 1987

_____

U.S.D.J.

FOOTNOTES

1. The order provides:

> The Defendants, whether by themselves their servants or agents or otherwise howsoever be restrained until the hearing of the originating Summons herein or further order from selling, chartering, disposing of or charging the Vessel "BRAZILIAN FRIENDSHIP" or delivering up possession or control of the same or otherwise dealing with the said Vessel in any manner which is inconsistent with the rights of plaintiffs under the Sale Agreement, relating to the said Vessel signed on behalf of the Plaintiffs and Defendants on 25th May, 1987.

2. References to the transcripts of the proceedings of this matter on June 16 and June 30, 1987, are specifically referred to hereinafter as to said dates.

3. The Supreme Court has recently noted that Rule 11 should be used to protect defendants from suits premised on baseless allegations. Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc., 56 U.S.L.W. 4017, 4021 (U.S. Dec 1, 1987).

4. See transcript of June 30 proceeding at page 3, 4, 5, 6 and 7.

5. See 13 C. Wright, A. Miller & E. Cooper Federal Practice and Procedure section 3522 (2d ed. 1984):

> The presumption is that a federal court lacks jurisdiction in a

> particular case until it has been demonstrated that jurisdiction over the subject matter exists. Thus the facts showing the existence of jurisdiction must be affirmatively alleged in the complaint. If these facts are challenged, the burden is on the party claiming jurisdiction to demonstrate that the court has jurisdiction over the subject matter.

Id. at pp. 62-65 (footnotes omitted).

6. Counsel for defendant do not concede that Hydra can be dropped from the action. Transcript of June 30 proceeding at 26-27.

7. Plaintiffs' counsel also alleged at the June 30 proceeding that MNC was a bogus or sham corporation formed solely for the purpose of taking title to the ship. Transcript of June 30 proceeding at 13. But as defendants observe in their Reply Memorandum of Law in Support of Defendants' Motion for Rule 11

Sanctions (hereinafter "Defendants' Reply Memo"), the cases cited by plaintiffs in support of piercing the corporate veil are largely irrelevant. See Defendants' Reply Memo at 9-18. See Amarillo Oil Co. v. Mapco, Inc., 99 F.R.D. 602, 604 (N.D. Tex. 1983) ("the creation of diversity jurisdiction is one of the least compelling reasons for disregarding corporate entity.")

It should also be noted that if there is to be jurisdiction under 9 U.S.C. section 203, see infra at 15, Hydra would be a necessary party. If Hydra were not dropped from the action, even if the Court pierced the corporate veil of MNC, diversity jurisdiction would be lacking because of the presence of aliens on both sides of the case. See Venezolana, supra, 629 F.2d at 790.

8. Plaintiffs' counsel argues that there is a "solid line of cases holding that jurisdiction is validly based upon the arbitration statute or Convention to issue pre-arbitration equitable relief." Plaintiffs' memo at 12. But no case cited by plaintiffs' counsel addressed the issue whether a court could issue an injunction based solely on the Convention. Carolina Power & Light v. Uranex, 451 F. Supp. 1044 (N.D. Cal. 1977), and Rogers, Burgun, Shahine & DeSchler, Inc. v. Dongsan Construction Co., Ltd., 598 F. Supp. 754 (S.D.N.Y. 1984), both dealt with attachment rather than injunctive relief. Paramount Carriers Corp. v. Cook Industries, Inc., 465 F. Supp. 599 (S.D.N.Y. 1979), Construction Exporters Inc., UNECA v. Nikki Maritime, Ltd., 558 F. Supp. 1372

(S.D.N.Y. 1983), and Andros Compania Maritime, S.A. v. Andre & Cie., S.A., 430 F. Supp. 88 (S.D.N.Y. 1977), concerned admiralty jurisdiction, note the Convention alone. Finally, Erving v. Virginia Squires Basketball Club, 349 F. Supp. 716 (E.D.N.Y.), aff'd, 468 F.2d 1064 (2d Cir. 1972), does not even mention the Convention.

The Court found Pilkington Brothers P.L.C. v. AFG Industries, Inc., 581 F. Supp. 1039 (D. Del. 1984), most apposite. Thus, although the Court did not ultimately find the line of cases cited by plaintiffs' counsel persuasive, it cannot be said that it was not a good faith argument for the extension of existing law.

9. But plaintiffs' counsel indicated that it would drop Hydra from the action

because it was just a nominal party. Transcript of June 30 proceeding at 10 ("Hydra Offshore Inc. is a nominal defendant, your Honor. We could drop Hydra for the sake of jurisdiction. Hydra was just put in there in the first instance because it was nominal party.")

10. See Whittington v. Ohio River Co., 115 F.R.D. 201 (E.D. Ky. 1987). The court there noted that "the time saved by deterring frivolous litigation tends to be offset in hearings on Rule 11 motions and countermotions." Id.at 205.

11. Mr. Golub neglects to mention, however, that the first memorandum of law filed in support of the relief sought was also filed on June 29, 1987, the day before the oral argument.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 6th day of July, one thousand nine hundred and eighty-nine.

DOCKET NUMBER 88-7003

INTERNATIONAL SHIPPING COMPANY, S.A., and LYGREN MARITIME SERVICE, S.A.,
Plaintiffs-Appellants,

and

A. RICHARD GOLUB, as Attorney,
Appellant,

-v.-

HYDRA OFFSHORE, INC., T. PETER PAPPAS, JAMES PAPPAS, AMERICAN GENERAL RESOURCES, INC., ASTRON MANAGEMENT CORPORATION, RICHARD JAROSS, and MARYLAND NAVIGATION CO., INC.,
Defendants-Appellees.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by Appellants INTERNATIONAL SHIPPING COMPANY, S.A. and LYGREN MARITIME SERVICE, S.A.,

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

ELAINE B. GOLDSMITH
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL SHIPPING COMPANY, S.A., LYGREN MARITIME SERVICES, S.A.,

Plaintiffs,

-against-

HYDRA OFFSHORE, INC., T. PETER PAPPAS, JAMES PAPPAS, AMERICAN GENERAL RESOURCES, INC., RICHARD JAROSS, ASTRON MANAGEMENT CORPORATION and MARYLAND NAVIGATION CO., INC.,

Defendants.

COMPLAINT

Plaintiffs International Shipping Company S.A. and Lygren Maritime Services, S.A., by their attorney A. Richard Golub, allege as follows:

JURISDICTION

1. The Court's jurisdiction and the claims of the plaintiff are based, inter alia, upon 28 U.S.C. Section 1333, and upon 28 U.S.C. Section 1332 as a

result of diversity of citizenship and the amount in controversy being in excess of $10,000.00 and upon Title IX of the U.S.C. Section 14, entitled, "Convention On Recognition And Enforcement Of Foreign Arbitral Awards" ("Arbitration Treaty").

VENUE

2. Venue is based upon 28 U.S.C. Section 1391.

PARTIES

3. The plaintiff International Shipping Co., S.A., ("International") at all times relevant herein is and was a foreign corporation organized under the laws of Panama for the purposes of, inter alia, purchasing and selling maritime vessels of various nature.

4. Plaintiff Lygren Maritime Services, S.A. ("LMS") is a foreign Corporation organized under the laws of Switzerland with its principal place of business in Nyon, Switzerland and at all times relevant hereto is and was an agent and broker in the business of brokering the purchase and sale of maritime vessels of various nature.

5. Upon information and belief, at all times relevant hereto, defendant Hydra Offshore, Inc. ("Hydra") is and was a foreign corporation organized under the laws of Monrovia, Republic of Liberia.

6. Upon information and belief, at all times relevant hereto, defendant American General Resources, Inc. ("AGR") is and was a domestic corporation organized under the laws of the State of Connecticut with its principal place of

business in Roxbury, Connecticut and engaged in the business of, inter alia, the purchase and sale of vessels of various nature.

7. Upon information and belief, at all times relevant hereto, defendant Richard Jarros is and was a resident of the State of Connecticut, Town of Roxbury, and is the sole or majority shareholder of AGR. Defendant Jaross, as set forth hereinbelow, acted on behalf of AGR and individually in a tortious manner.

8. Upon information and belief, at all times relevant hereto, defendant T. Peter Pappas ("Pappas") is and was a resident of the State of Connecticut, Village of Greenwich, and is a principal shareholder of Astron Management Corporation ("Astron") and an interested party in Maryland Navigation Co., Inc.

("MNC"). As set forth below, Pappas acted on behalf of Astron and MNC and individually in a tortious manner. Upon information and belief, at all times relevant hereto, defendant Astron is and was a domestic corporation with its principal place of business at 123 Main Street, White Plains, New York and is engaged in the business of, inter alia, purchasing, selling and operating maritime vessels of various nature.

9. Upon information and belief, at all times relevant hereto, defendant James Pappas ("JP") is and was a resident of the State of Massachusetts and is a shareholder of Astron and an interested party in MNC. As set forth below JP acted in concert with Pappas and is referred to collectively and as appropriate individually, as acting on behalf of Astron and MNC in a tortious

manner as upon information and belief, JP knew or had reason to know of the activities of Pappas and participated to the full extent possible therein, as set forth hereinbelow.

10. Upon information and belief, at all times relevant hereto, defendant MNC was and is a foreign corporation doing business in the County of Westchester with a principal place of business c/o Astron, 123 Main Street, White Plains, New York and is a corporation formed for the purpose of owning the vessel in issue herein.

11. Upon information and belief, the acts of defendants MNC, Astron, JP and Pappas all took place at the corporate offices of Astron, in the State of New York, County of Westchester.

FACTUAL ALLEGATIONS

12. In or about April, 1987, plaintiff International through LMS, who acted as agent on International's behalf, commenced negotiation for the purchase from defendant Hydra of the vessel BRAZILIAN FRIENDSHIP ("the Friendship"), being a cargo ship under the Liberian flag with a registered tonage of NRT/GRT 35,780/48,938.

13. Said negotiations were engaged through telex and telephone between LMS and Hydra's agent, to wit, English White Shipping.

14. On or about May 15, 1987, plaintiffs agreed with defendant Hydra for sale of the ship at a price of Two Million Six Hundred and Fifty Dollars (U.S.) with Ten Percent (10%) deposit to be lodged upon contract signing or "all subjects lifted" whichever is later.

Said agreement was entered by telex communications ("telex agreement").

15. Immediately subsequent to reaching said agreement on May 15, 1987, Atle Lygren ("AL"), a principal in LMS, on behalf of LMS and International traveled to Bucharest, Romania to arrange for repair of the vessel and to arrange for sale of the cargo then on board. AL also hired a consultant to go to Venezuela to inspect the vessel and establish what work needed to be done.

16. On May 25, 1987, plaintiff International formalized, in accordance with the telex agreement of May 15th, said agreement in the form of a written memorandum of agreement ("the agreement") with Hydra for the purchase of the Friendship by International which, inter alia, set forth the price of Two Million Six Hundred Fifty

Thousand ($2,650,000.00) Dollars (U.S.) and the agreement further provided that a deposit of Ten Percent (10%) would be made within "three banking days from the date of this agreement."

17. At all times relevant herein, the parties to the agreement and their representatives understood that the contract required said deposit to be made three days from the date of the signing of the agreement, to wit, May 25, 1987.

18. On May 27, 1987, International transferred and accordingly, deposited into the Royal Bank of Scotland, as required by the agreement, the Ten Percent (10%) purchase money deposit on behalf of defendant Hydra.

19. On May 28, 1987, defendant Hydra, in violation of the agreement with plaintiffs sought to return said

down payment without justification, unlawfully and in breach of its the agreement with International and repudiated the agreement without cause or justification in fact or law.

20. As a result of defendant Hydra's breach of contract, Plaintiff International has been and continues to be irreparably injured and cannot be made completely or adequately whole by monetary compensation alone under the circumstnaces which prevail.

DAMAGES PREFACE

21. Exemplary damages are sought on the respective causes of actions below, because of the nature of the wrongdoing being grossly lawless conduct evidencing wanton, willful, malicious and opressive behavior, reflecting acts conceived in a

frame of mind of criminal indifference to civil obligations, indifference to moral fibre, aggravated by evil motives and accordingly, such activities reached standards of reprehension that should be countenanced with an award of an exemplary nature so as to serve as a warning to society and other individuals or entities who may be inclined to act in a similar fashion as the defendants herein.

AS AND FOR A FIRST CLAIM

22. Plaintiffs repeat and reallege the foregoing relevant allegations.

23. On or about the date the agreement was executed between plaintiffs and defendant Hydra for purchase of the Friendship, defendants Jaross, Pappas, JP, AGR, Astron and MNC had actual knowledge of the agreement.

24. In contravention of plaintiff International's rights to purchase the vessel, defendants Jaross and AGR made an offer to purchase the Friendship from Hydra and as such intentionally and knowingly sought to induce Hydra to breach its contract with plaintiff International.

25. Upon information and belief, defendants Jaross and AGR, were acting on their own behalf and on behalf of defendants Pappas, JP, Astron and MNC.

26. Upon information and belief, subsequent to May 25, 1987, at a point in time presently unknown to plaintiffs, defendant Hydra agreed to sell and did sell to defendants Jaross and AGR, who did purchase, the Friendship on their behalf and on behalf of Pappas, JP, Astron and MNC in violation and breach of plaintiff International's contractual

rights. Upon information and belief, on or about June 2, 1987, defendants transferred ownership of The Friendship into the name of MNC in the country of Liberia's official registry.

27. The acts of defendants aforestated constitute an intentional and tortious interference with contractual relations which has damaged plaintiffs.

28. Plaintiff International has commenced an arbitration in the United Kingdom entitled, In the Matter of Arbitration Between International Shipping Company, S.A. and Hydra Offshore, Inc.

29. Plaintiff International has obtained from the High Court of Justice, Queens Bench Division, Commercial Court (Turner, J.) of the United Kingdom an

order dated June 1, 1987 which orders that:

> The Defendants, whether by themselves their servants or agents or otherwise howsoever be restrained until the hearing of the orginating Summons herein or further order from selling, chartering, disposing of or charging the Vessel "BRAZILIAN FRIENDSHIP" or delivering up possession or control of the same otherwise dealing with the said Vessle in any manner which is inconsistent with the rights of the Plaintiffs under the Sale Agreement, relating to the said Vessel signed on behalf of the Plaintiffs and Defendants on 25th May, 1987.

30. In addition thereto, plaintiff International will suffer irreparable harm if defendants Jaross, AGR, Pappas, Astron and/or MNC are allowed to continue utilizing said Vessel or given the opportunity to transfer, sell, assign, relocate or secrete the Friendship and cargo or to place the

same beyond the jurisdiction of this Court or any other court.

31. The order of the English court enjoining defendants from dealing with The Friendship in any manner detrimental to plaintiffs' rights is binding and enforceable in the Courts of the United States (Federal Courts and otherwise), pursuant to the Arbitration Treaty, Title 9, Section 201, et seq. and under the doctrines of comity.

32. Accordingly, plaintiffs seek a permanent injunction based upon the prior order of the United Kingdom Court applicable law, viz, Title 9, Section 20, et seq., and upon a balancing of the equities and the hardship which would be incurred by plaintiffs if the ship were disposed of or damaged, which injunction would enjoin defendant from utilizing the Vessel in any manner, selling,

chartering, disposing of, relocating, secreting or charging the Vessel "BRAZILIAN FRIENDSHIP" or delivering up possession or control of the same or otherwise dealing with the said Vessel in any manner which is inconsistent with the rights of plaintiffs under the agreement and Twenty Million ($20,000,000.00) Dollars exemplary damages.

AS AND FOR A SECOND CLAIM
AGAINST DEFENDANT HYDRA

33. Plaintiffs repeat and reallege the foregoing relevant allegations.

34. This Second Claim is pursued only to the extent necessary to secure and enforce the award in the arbitration now proceeding in the United Kingdom and to the extent said claim is not exclusively covered by and litigated within said English arbitration action.

35 On or about May 28, 1987, defendant Hydra, as aforestated, violated and breached the agreement by returning said downpayment without cause or justification in fact or law.

36. As a result of defendant Hydra's breach of contract, plaintiff International has been and continues to be irreparably injured (i.e., for loss of use of the ship) and cannot be made completely or adequately whole by monetary compensation alone because of the uniqueness of the chattel and the economic opportunity presented by the specific nature of such chattel in the physical state of disrepair in which it is presently contained (See C.P.L.R. Section 7109).

37. As a result thereof, plaintiff International demands specific performance of the contract by said

defendant and conveyance of the Friendship to International pursuant to the terms of the agreement and Twenty Million ($20,000,000.00) Dollars in exemplary damges.

AS AND FOR A THIRD CLAIM

AGAINST DEFENDANT HYDRA

38. Plaintiffs repeat and reallege the foregoing relevant allegations.

39. This Third Claim is pursued only to the extent necessary to secure and enforce the award in the arbitration now proceeding in the United Kingdom and to the extent said claim is not exclusively covered by and litigated within said English arbitration action.

40. As a result of defendant Hydra's unjustifiable repudiation of the down payment and breach of the agreement, plaintiffs International and

LMS have incurred actual, special and consequent damages in a sum in excess of Twelve Million Five Hundred Thousand ($12,500,000.00) Dollars as partial compensation and Twenty Million ($20,000,000.00) Dollars in exemplary damages.

AS AND FOR A FOURTH CLAIM
AGAINST ALL DEFENDANTS

41. Plaintiffs repeat and reallege the foregoing relevant allegations.

42. The acts of defendants Jaross, AGR, Pappas, JP, Astron and MNC, in seeking to induce and inducing Hydra to sell the Friendship to said purchasing defendants engaged in an intentional and tortious interference with contractual relations and as a result thereof, have injured plaintiff International in a manner by which plaintiff International cannot be made whole solely by monetary compensation and has and continues to be irreparably harmed as a result of continued possession of the Friendship by defendants Jaross, AGR, Pappas, JP. Astron and/or MNC.

43. As a result thereof plaintiff requests that defendants Jaross, AGR, Pappas, JP, Astron and/or MNC be made to deliver up possession of the Friendship to Hydra for delivery over to and sale

to plaintiff International and that Defendant Hydra be made to deliver up and disgorge itself of any profits obtained by sale of the vessel to said defendant purchasers, together with the payment of Twenty Million ($20,000,000.00) Dollars in exemplary damages.

AS AND FOR A FIFTH CLAIM
AGAINST DEFENDANT HYDRA

44. Plaintiffs repeat and reallege the foregoing relevant allegations.

45. The acts of defendants Jaross, AGR, Pappas, JP, Astron and/or MNC as aforestated, constitute an intentional and tortious interference with contractual relations which has damaged plaintiffs.

46. Accordingly, plaintiffs demand compensatory damages from defendants for actual, special and consequential damages incurred in the sum in excess of Twelve Million Five Hundred Thousand ($12,500,000.00) Dollars (U.S.) and exemplary damages in the sum of Twenty Million ($20,000,000.00) Dollars (U.S.).

AS AND FOR A SIXTH CLAIM
AGAINST DEFENDANT HYDRA

47. Plaintiffs repeat and realleges the foregoing relevant allegations.

48. This Sixth Claim is pursued only to the extent necessary to secure and enforce the award in the arbitration

now proceeding in the United Kingdom and to the extent said claim is not exclusively covered by and litigated within said English arbitration action.

49. Defendant Hydra, subsequent to the signing of the written agreement to sell the Friendship to plaintiff International, held said ship in trust for and on behalf of said plaintiff.

50. As a result of defendant Hydra's breached its fiduciary duty under which said property was held in trust for plaintiff International.

51. As a result thereof, plaintiff is entitled to a constructive trust relating to the purchase money defendant Hydra received from the purchasing defendant(s).

52. Accordingly, defendant Hydra should be made to account, to pay over to plaintiff International and to

disgorge itself of the purchase monies received from sale of the Friendship by Hydra to the purchasing defendants and plaintiffs demand exemplary damages as a result of defendant's wanton and willful acts in the sum of Twenty Million ($20,000,000.00) Dollars.

WHEREFORE, plaintiffs demand judgment:

(a) on the First Claim for injunctive relief enjoining any of the defendants from the sale, transfer, chartering, disposing, charging, relocating, secreting, delivering of possession, or controlling or otherwise dealing with the Vessel in a manner inconsistant with the rights of plaintiffs pursuant to the written agreement of the parties; together with Twenty Million ($20,000,000.00) Dollars exemplary damages;

(b) on the Second Claim against defendant Hydra for specific performance, together with Twenty Million ($20,000,000.00) Dollars exemplary damages;

(c) on the Third Claim against defendant Hydra for monetary damages in the sum in excess of Twelve Million Five Hundred Thousand ($12,500,000.00) Dollars, together with Twenty Million ($20,000,000.00) Dollars exemplary damages;

(d) on the Fourth Claim for specific performance against defendants Jaross, AGR, Pappas, Astron and MNC and disgorgment of profits by defendant Hydra;

(e) on the Fifth Claim against all defendants for compensatory damages in the sum in excess of Twelve Million Five Hundred Thousand ($12,500,000.00)

Dollars and exemplary damages in the sum of Twenty Million ($20,000,000.00) Dollars;

(f) on the Sixth Claim for the impressing of a constructive trust over the funds received by Hydra, disgorgement of said funds and exemplary damages in the sum of Twenty Million ($20,000,000.00) Dollars;

(g) for the costs, fees, disbursements and interest, including legal fees, incurred by plaintiffs as a result of this action;

(h) such other and further relief as to this court may appear just and proper.

Dated: New York, New York
June 8, 1987

A. Richard Golub, Esq.

New York County Clerk's Index No. 17313/87

To be argued by
A. Richard Golub
Time Requested: 20 min.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INTERNATIONAL SHIPPING COMPANY, S.A., and LYGREN MARITIME SERVICES, S.A.
Plaintiffs-Appellants,

-and-

A. RICHARD GOLUB, as attorney,
Appellant,

-against-

HYDRA OFFSHORE, INC., T. PETER PAPPAS, JAMES PAPPAS, AMERICAN GENERAL RESOURCES, INC., ASTRON MANAGEMENT CORPORATION, RICHARD JAROSS, MARYLAND NAVIGATION CO., INC.,
Defendants-Appellees.

BRIEF FOR APPELLANT

A. RICHARD GOLUB
Attorney for Appellant
42 East 64th Street
New York, New York 10021
(212) 838-4811

(vii) The Court in its Order clearly erroneously stated (A225, n. 8) that Rogers Burgun, Shahine & DeSchler, Inc., v. Dongsan Construction Co. Ltd., 598 F.Supp. 754 (S.D.N.Y. 1984), was not on point for the proposition that Court could issue an injunction based on the Convention since the case, according to the Court, dealt with "attachment." In fact, a cursory reading of Rogers, supra, indicates that it dealt with injunction only, and only injunction, not attachment. Rogers, supra, in that regard runs opposite to Pilkington Bros. P.L.C. v. AFG Industries, Inc., 581 F.Supp. 1039 (D. Del. 1984) which the Court chose to adopt. Significantly, once the Court has the right to issue an injunction (such as the Rogers Court held it did) that injunction may extend to non-parties such as Maryland, Pappas,

et al. Puget Sound Traction, Light & Power Co. v. Lawrey, 202 F. 262 (W.D. Wash. 1913); Ex parte Lennon, 166 U.S. 548 (1897).

The Arbitration Treaty aside, the case law supports plaintiff's position on diversity. Once plaintiff establishes that existing precedent supports plaintiff's position as having a basis in law or supports a good-faith argument to extend, modify or reverse existing case law, the Court cannot assess sanctions simply because the Court disagrees with that case law or believes its colleague (viz. Bergen Shipping, supra) reached an erroneous decision. The instant action unfortunately presents such a case.